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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HENRY MANJARRES,)	
)	
Plaintiff,)	Civ. No. 07-6323-TC
)	
vs.)	
)	
)	
OREGON DEPARTMENT OF)	ORDER AND OPINION
TRANSPORTATION, An Agency)	
of the State of Oregon,)	
)	
Defendant.)	

COFFIN, Magistrate Judge:

Plaintiff Henry Manjarres ("Manjarres") filed this action against the Oregon Department of Transportation ("ODOT") asserting claims under Title VII for retaliation, discrimination and harassment. ODOT moves for summary judgment on the grounds that claim preclusion bars Manjarres's claims. Under Fed. R. Civ. P. 73(b), the parties have consented to magistrate judge jurisdiction. For the reasons set forth below, the court GRANTS ODOT's motion for summary judgment.

Background

Manjarres is Native American and Hispanic. He has worked for ODOT for approximately twenty-five years. For the first twelve years of his employment, Manjarres worked as an

1 Engineering Specialist. Then, Manjarres became a Civil Rights
2 Specialist in the Office of Civil Rights. He has worked in this
3 capacity for the past thirteen years. (Doc. 37, Manjarres Decl.
4 ¶¶ 2, 3.)

5 On October 27, 2007, Manjarres filed suit in Marion County
6 Circuit Court against ODOT and individual defendants asserting
7 claims under ORS 695A.030 for, among other things,
8 discrimination and retaliation. (Doc.19, ex. 1.) In his state
9 court complaint, Manjarres asserted that his employers
10 discriminated against him due to his race and national origin.
11 (Id. at *2.) Specifically, Manjarres asserted that he was passed
12 over for a position in favor of a less-qualified Caucasian
13 employee; that ODOT retaliated against him for engaging in
14 protected conduct; and that he was treated differently than
15 similarly situated Caucasian employees. (Id. at *2-6.)

16 Approximately ten days later, on November 7, 2007,
17 Manjarres filed the above-captioned case. (Doc. 1.) The federal
18 and state court actions arise out of identical operative facts.
19 (Doc. 1; Doc. 19, ex. 1.) As in his state court complaint,
20 Manjarres claimed discrimination based on race and national
21 origin. (Doc. 1.) The federal claim alleged that Manjarres had
22 been passed over for promotion in favor of a less qualified
23 Caucasian employee; scrutinized to a higher degree than
24 similarly situated Caucasian employees; denied vacation time
25 when similarly situated Caucasian employees were not; and
26 retaliated against for his internal complaints. (Doc. 1.)

27 On April 23, 2009, after a jury trial in which the jury had
28 found in favor of defendants the state court entered a general

1 judgment in favor of ODOT and the other individual defendants.
2 (Doc. 54.) This judgment dismissed all of Manjarres's claims
3 with prejudice and resolved all matters related to Manjarres's
4 lawsuit. (Doc. 54 at *14.)

5 *Legal Standard*

6 Federal Rule of Civil Procedure 56 allows the granting of
7 summary judgment:

8 if the pleadings, the discovery and disclosure
9 materials on file, and any affidavits show that there
10 is no genuine issue as to any material fact and that
11 the movant is entitled to judgment as a matter of law.

12 Fed. R. Civ. P. 56(c). There must be no genuine issue of
13 material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
14 247-48 (1986).

15 The movant has the initial burden of establishing that no
16 genuine issue of material fact exists or that a material fact
17 essential to the nonmovant's claim is missing. *Celotex Corp. v.*
18 *Catrett*, 477 U.S. 317, 322-24 (1986). Once the movant has met
19 its burden, the burden shifts to the nonmovant to produce
20 specific evidence to establish a genuine issue of material fact
21 or to establish the existence of all facts material to the
22 claim. *Id.*; see also, *Bhan v. NME Hosp., Inc.*, 929 F.2d 1404,
23 1409 (9th Cir. 1991); *Nissan Fire & Marine Ins. Co., Ltd., v.*
24 *Fritz Cos., Inc.*, 210 F.3d 1099, 1105 (9th Cir. 2000). In order
25 to meet this burden, the nonmovant "may not rely merely on
26 allegations or denials in its own pleading," but must instead
27 "set out specific facts showing a genuine issue of fact for
28 trial." Fed. R. Civ. P. 56(e).

Material facts which preclude entry of summary judgment are

1 those which, under applicable substantive law, may affect the
2 outcome of the case. *Anderson*, 477 U.S. at 248. Factual
3 disputes are genuine if they "properly can be resolved only by a
4 finder of fact because they may reasonably be resolved in favor
5 of either party." *Id.* On the other hand, if, after the court
6 has drawn all reasonable inferences in favor of the nonmovant,
7 "the evidence is merely colorable, or is not significantly
8 probative," summary judgment may be granted. *Id.*

9 *Analysis*

10 1. *Second Claim for Relief: Violation of the Family and* 11 *Medical Leave Act*

12 ODOT argues that Manjarres was never denied any vacation or
13 Family and Medical Leave Act ("FMLA") and that Manjarres never
14 suffered any adverse employment action related to his use of
15 vacation or FMLA time. Manjarres represented, both in his
16 response to ODOT's motion for summary judgment and in his
17 response to ODOT's supplemental submission, that he agrees to
18 dismiss this claim. Based on these concessions, the court
19 grants ODOT's motion for summary judgment on this claim.

20 2. *First Claim for Relief: Violation of Title VII based on* 21 *Race and National Origin Discrimination and Retaliation and* 22 *Third Claim for Relief: Violation of 1981 based on "race* 23 *and color" discrimination*

24 ODOT argues that the Marion County Circuit Court's adverse
25 judgement bars plaintiff's Title VII and 1981 claims under the
26 doctrine of res judicata, which is also known as claim
27 preclusion. Manjarres disputes that claim preclusion bars his
28 claim, stating that his state court claims were based on
Oregon's state statute rather than Title VII and contending that
he voluntarily dismissed his state statute discrimination claims

1 before the state court adjudicated those claims.

2 Claim preclusion prohibits the relitigation of any claims
3 that were raised or could have been raised in a prior action.
4 *Western Radio Servs. Co. Inc. v. Glickman*, 123 F.3d 1189, 1192
5 (9th Cir. 1997) (citations omitted). The doctrine serves to
6 "relieve parties of the cost and vexation of multiple lawsuits,
7 conserve judicial resources, and by preventing inconsistent
8 decisions, encourage reliance on adjudication." See *Marin v.*
9 *HEW Health Care Financing Agency*, 769 F.2d 590, 594 (9th Cir.
10 1985) (internal quotations omitted). Under 28 U.S.C. § 1738,
11 federal courts must give state courts judgments the same
12 preclusive effect as federal judgments. Claim preclusion
13 applies only when there is: (1) an identity of claims; (2) a
14 final judgment on the merits; and (3) identity or privity
15 between the parties. *Western Radio*, 123 F.3d at 1192 (internal
16 citations omitted).

17 Here, the first requirement for issue preclusion is
18 satisfied. A comparison of Manjarres's state court and federal
19 court complaints reveals that the claims, and the operative
20 facts upon which they are based, are identical. Indeed, the only
21 difference is that Manjarres brought the federal claims under
22 Title VII and 42 U.S.C. § 1981 while he asserts the state claims
23 pursuant to ORS 659A.030. Manjarres' assertion that issue
24 preclusion does not apply because Title VII and ORS 659A.030 are
25 different statutes is not persuasive. The Title VII claims
26 could have been raised in the state court action. *Wirkkula v.*
27 *Union Oil Co. of California*, 100 Or. App. 219, 221-22 (Or. App.
28 1990) (stating there is a presumption of concurrent state

1 jurisdiction over a federal claim). Claim preclusion prevents
2 relitigation of claims that could have been raised in a prior
3 action. *Western Radio*, 123 F.3d at 1192. Moreover, to allow
4 Manjarres this "second bite at the apple" by allowing him to
5 litigate his discrimination and retaliation claims a second time
6 in federal court would waste judicial resources and thwart claim
7 preclusion's purpose of relieving parties of the cost and
8 vexation of multiple lawsuits. *Marin*, 769 F.2d at 594.

9 Next, ODOT has provided evidence that Manjarres had a full
10 and fair opportunity to litigate his claims before the state
11 court entered a judgment on the merits. Manjarres appears to
12 contend that there is no state court final judgment on the
13 merits of his ORS 659A.030 race and national origin disparate
14 treatment and hostile work environment claims because he
15 voluntarily dismissed those claims. The Marion County Circuit
16 Court General Judgment (doc 19, ex. 1) submitted by ODOT belies
17 this claim. The General Judgment states:

18 At the conclusion of plaintiff's case;
19 (1) plaintiff moved to dismiss his Second Claim, Count
20 1: Race and National Origin Discrimination (Disparate
21 Treatment) against the Oregon Department of
22 Transportation pursuant to ORS 659A.030 in his First
23 Amended Complaint, Second Claim, Count 3: Hostile Work
24 Environment Race and National Origin Discrimination
25 against the Oregon Department of Transportation
26 pursuant to ORS 659A.030(1)(b)....The court granted
27 the motions and *dismissed these claims with prejudice*.

28 (Doc. 19, ex. 1 at *4, lines 4:13, emphasis added.) Manjarres
fails to raise any dispute of material fact concerning the
sufficiency or the finality of the state court proceedings.

Finally, the third element necessary for issue preclusion
is satisfied-the parties in the state court action and the

1 parties in the above captioned federal action are identical.
2 *Western Radio*, 123 F.3d at 1192.

3 ODOT has made a successful *prima facie* showing in support
4 of their position that Manjarres's Title VII and 1981 claims are
5 precluded by the final judgment of the Marion County Circuit
6 Court.


7 *Conclusion*

8 The order requiring ODOT to show cause filed April 29, 2009
9 (doc. 53) is discharged.

10 The court grants ODOT's motion for summary judgment (doc
11 15) and Manjarres's claims are dismissed with prejudice.

12 IT IS SO ORDERED.

13
14 Dated this 2 day of June, 2009.

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18 _____
THOMAS COFFIN
United States Magistrate Judge